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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

17 Cr. 19 (RMB)

RICHARD USHER,  
ROHAN RAMCHANDANI, and  
CHRISTOPHER ASHTON,

Defendants.

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New York, N.Y.  
October 25, 2018  
9:00 a.m.

Before:

HON. RICHARD M. BERMAN,

District Judge

APPEARANCES

U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION (NY)

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(Trial resumed)

THE COURT: So this is a supplemental charge conference following the one we had yesterday. This issue that we are going to primarily talk about today was not raised in the charge conference yesterday, the part that was off the record that came up first in the afternoon when defense was lodging its objections.

But be that as it may, it's an important issue. I asked for briefing last night, short briefing, and received letter briefs from each side. I'm happy to hear you each out.

What I did was eliminated one of the jurisdictional options for the conspiracy. I think it's found on page 15 of the latest jury instructions which we handed out this morning, page 15 under the heading Sherman "Act Conspiracy Third Element Commerce."

And it now reads that that third element is satisfied if you find beyond a reasonable doubt that the charged conspiracy had a direct, substantial, and reasonably foreseeable effect in the U.S.

It had two options before. So the idea here is not to advantage or disadvantage any party but to get the law as correct as we can. So I'm happy to hear from both sides.

MS. TEWKSBURY: Thank you, your Honor. We appreciate the Court's efforts here, and we think that we're almost all the way there, but to get the law entirely correct, it looks

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Summation - Mr. Schertler

1 to fight this case. He did so because he believed that you  
2 would reach the right, the fair, and the just result, the only  
3 verdict, the only verdict that's consistent with the evidence,  
4 your common sense, and with justice is that Rohan is  
5 not guilty.

6 Ladies and gentlemen, he's in your hands now. Please  
7 end this. Send him home. Thank you.

8 THE COURT: Thanks, counsel.

9 MR. SCHERTLER: Thank you, your Honor.

10 Your Honor, may I have 30 seconds here to set up the  
11 easel?

12 THE COURT: Sure.

13 MR. SCHERTLER: Thank you. Ladies and gentlemen, good  
14 morning. My name is David Schertler, and I represent Chris  
15 Ashton, along with my colleague, Lisa Manning. And I've been  
16 waiting for this opportunity to be able to talk to you about  
17 the case.

18 By now, you've probably learned more about the foreign  
19 exchange trading business than you ever thought you'd know or  
20 ever wanted to know. And I submit to you that that is one of  
21 the problems in this case.

22 This is a very complicated business. And I submit to  
23 you that the government doesn't really understand it, and it  
24 really doesn't understand what these traders were able to do  
25 and what they couldn't do.

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Summation - Mr. Schertler

1           We're talking about an antitrust case here, and when  
2           you talk about your typical antitrust case, it's like the  
3           example I tried to raise with Matt Gardiner.

4           The typical cartel is the OPEC oil cartel. As we all  
5           know, those are countries that control the majority of the  
6           world's supply of oil. When they get together and they want to  
7           increase the price, what they do is they say, okay. We're all  
8           going to cut back the amount of oil we're going to produce, and  
9           they cut back the supply, and the price goes up, and that's how  
10          they do it.

11          If they want the price to go down, they do the  
12          opposite. They all get together. And they say, let's increase  
13          our supply. You increase this much, you increase this much,  
14          and they flood the market, and the price goes down. That's not  
15          what foreign exchange is.

16          These men as traders at the banks -- they had no  
17          control over the supply and demand. That was all dictated to  
18          them by the customer orders that the bank received. They had  
19          no control over the price. They couldn't affect the price.  
20          And that's the basic misconception that I think the government  
21          has in this case.

22          I think the best way for me to try to explain the case  
23          to you from Chris Ashton's perspective is to go through an  
24          outline that I've prepared, and the outline goes through seven  
25          different points.

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Summation - Mr. Schertler

1           And I'll leave my chart up on the easel so you can  
2 follow along with my closing argument. I believe that this  
3 will show you why Chris Ashton -- why the evidence exonerates  
4 Chris Ashton and why you should find him not guilty. And I'll  
5 respond to everything that Ms. Syme said about Chris Ashton.

6           So let me get right to it. Ms. Manning said it in her  
7 opening statement to you, but a trial has two things. A trial  
8 has the law -- and as you've been told, Judge Berman will  
9 explain the law to you after we finish our closing arguments --  
10 and it has the facts.

11           As Judge Berman told you, you, the ladies and  
12 gentlemen of the jury, based on what you've seen and heard in  
13 the last two weeks -- you'll decide the facts.

14           A simple analogy, maybe not the best one, but you're  
15 watching a football game and the receiver catches a ball and  
16 he's right on the sideline. It looks like a beautiful catch.  
17 You're watching it. You're the fact-finder, and you say, wow.  
18 He caught the ball, and he goes out of bounds. Those are the  
19 facts. The guy was on the sidelines, he threw the pass, and he  
20 caught the ball.

21           What's the rule? The rule is that you have to have  
22 your two feet inside the sideline in order for it to be a good  
23 catch. So that's the rule. That's the law. That's what  
24 Judge Berman will tell you about.

25           But in order to understand the facts and how the facts

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Summation - Mr. Schertler

1 apply to this case, you've got to understand the law. You've  
2 got to understand the rules.

3 And I want to emphasize -- I want to go through some  
4 of those rules with you. Now, Judge Berman is going to give  
5 you a much longer explanation of the rules, but I think there  
6 are a few rules that are extremely important in this case and  
7 that I want to bring to your attention.

8 You've already heard about reasonable doubt, the  
9 highest standard that we have in our legal system. At the end  
10 of the day, at the end of the day, whatever facts you decide,  
11 if you're not sure or if you're not certain or if you're not  
12 confident or if you think maybe a crime was committed or you  
13 think possibly a crime was committed, you must find them  
14 not guilty. That's reasonable doubt.

15 But here is another rule of law that I think is  
16 important in this case, and it's important because there is no  
17 dispute that Rohan, Richard, Chris, and Matt Gardiner were in a  
18 chatroom together and that they shared information in that  
19 chatroom together and that they traded with one another in that  
20 chatroom.

21 This is the rule that I expect Judge Berman will  
22 instruct you. Here is what it says: You may not -- you may  
23 not -- infer the existence of an illegal agreement -- and  
24 that's what this case is all about, an illegal agreement --  
25 solely from the fact that the defendants exchanged information

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Summation - Mr. Schertler

1 about currency prices, which they did; exchanged information  
2 about quantities, which they did; exchanged information about  
3 customer orders and identities, which they did, with each  
4 other. That sharing of information is not an illegal  
5 agreement, and you may not infer the existence of an illegal  
6 agreement from those facts.

7 And this goes hand in hand with another instruction  
8 that I expect Judge Berman to give you. The independent  
9 actions of a person or business do not constitute a restraint  
10 of trade in violation of the Sherman Act.

11 Ladies and gentlemen, I think this gets to the crux of  
12 this case. We submit that they shared information, they traded  
13 with one another, but they never coordinated their trading in  
14 any effort to try to impact the price. And independent  
15 actions, independent trading by these traders, does not  
16 constitute a violation of the Sherman Act.

17 Finally, one more. Judge Berman I expect will  
18 instruct you on this one as well, people responding to common  
19 perceptions of the market -- now we're talking about the  
20 foreign exchange market -- may take independent actions that  
21 are similar or parallel. Parallel conduct alone is not  
22 sufficient to prove an illegal agreement.

23 You know how that translates to our case? If you're  
24 in the chatroom together and everybody is -- what do we call  
25 it? -- the same way, and they say, we're all the same way. So

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Summation - Mr. Schertler

1 maybe that's good information that the price is going to go in  
2 that direction.

3 So if they trade their independent quantities in a  
4 similar or parallel way because they all think the same thing,  
5 common perception of the market that the price is going to go  
6 this way, that is not sufficient to prove an illegal agreement.

7 So the exchange of information, information about  
8 quantities, information about customer orders and identities,  
9 independent trading decisions, even if they're trading with one  
10 another or matching off, it's still their own independent  
11 trading decision.

12 Even parallel conduct, if they decide to go the same  
13 way because they have the same perception of the market based  
14 on information they received in the chat, is not illegal. And  
15 that is precisely what these men were doing in this case and  
16 nothing more.

17 So, ladies and gentlemen, let me -- one final rule.

18 If we can go to the next one.

19 I expect Judge Berman is going to instruct you as  
20 follows: If you find that the agreement -- this is the illegal  
21 agreement -- charged in the indictment did not exist, you  
22 cannot find any of the defendants guilty.

23 In a minute, I'll explain to you why I believe the  
24 evidence shows you that no such illegal agreement existed. So  
25 I'm going to move on to the facts and what did the evidence